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OFFICE OF PETITIONS

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In re Patent No. 7,455,987 : DECISION ON REQUEST
Habermann et al. : FOR
Issue Date: Nov. 25, 2008 : RECONSIDERATION OF
Application No. 09/664,326 : PATENT TERM ADJUSTMENT
Filed: Sep. 18, 2000 : and
Atty Docket No. : NOTICE OF INTENT TO ISSUE
02481.1693 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 23, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred three (1403) days. For the reasons stated below, this petition is treated as a petition requesting the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred thirty-six (736) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred thirty-six (736) days is **GRANTED to the extent indicated herein.**

Patentee's calculation of "B" delay fails to take into account that a notice of appeal was filed on July 7, 2003, prior to the filing of the RCE. The period consumed by appellate review, prior to the filing of an RCE, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii) and 37 CFR 1.703(b)(4). In this instance, the

period is 739 days, beginning on July 7, 2003, and ending on July 14, 2005, the day before the date the RCE was filed. Thus, B delay is 0 days.

37 CFR 1.703(a)(2) states that the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

On July 15, 2005, a reply was filed. On December 29, 2005, four months and 44 days after the day after the date the reply was filed, an Office action was mailed. Therefore, the period of adjustment for Office delay is 44 days, not 45 days as stated by patentees.

It is further noted that a period of adjustment of 528 days for Office delay was incorrectly entered in connection with the mailing of the Office action mailed on December 29, 2005. Therefore, with regard to the 528 day period, the petition is considered a letter pursuant to applicant's duty of good faith and candor. Entry of a period of adjustment of 44 days is warranted. The 528 day period of adjustment will be removed and a 44 day period of adjustment will be entered.

The patent term adjustment is revised to 736 days (845 (129 + 44 + 672) days of Office delay and 109 days of applicant delay)

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred thirty-six (736) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.


Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,455,987 B1
DATED : November 25, 2008
INVENTOR(S) : Habermann et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 737 days.

Delete the phrase "by 737 days" and insert – by 736 days--